

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE, IN AND FOR  
NEW CASTLE COUNTY  
COURT NO. 13

A. I. Enterprise,  
Plaintiff below,  
APPELLANT

v.

Leonard Mandracchia,  
Defendant below,  
APPELLEE.

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Civil Action No. JP13-18-004767

Decision following Trial *de novo* heard June 28, 2018.

Donald L. Gouge, 800 King Street Suite 303, P.O Box 1674, Wilmington, DE 19899-1674.  
Attorney for Plaintiff/appellant A. I. Enterprise.

Richard T. Wilson, Legal Services Corporation of Delaware, Inc. 100 West 10<sup>th</sup> Street, Suite  
203, Wilmington, DE 19801. Attorney for Defendant/Appellee Leonard Mandracchia.

Sean P. McCormick, Deputy Chief Magistrate.  
Katherine Ross, Justice of the Peace.  
Thomas Brown, Justice of the Peace.

### **Procedural Posture**

This case was filed by the Plaintiff on or about April 20<sup>th</sup> instant alleging rent delinquency and seeking possession of the rental unit as a result. A trial took place before a single Justice of the Peace on May 22<sup>nd</sup>; judgment being reserved until May 31<sup>st</sup>. At that time, the Magistrate presiding dismissed the matter without prejudice, holding that the Plaintiff's 5-day letter of demand as is required by 25 Del. Code § 5502 was insufficient for its purpose. Plaintiff timely appealed. A three-judge panel consisting of Deputy Chief Magistrate McCormick, Judge K. Ross, and Judge Brown considered the matter on June 28<sup>th</sup>. This is the court's decision after trial. For reasons stated below, the Court found in favor of Plaintiff for both a monetary judgement as well as regarding the issue of possession of the rental unit.

### **The Pre-trial Motion**

This matter largely turned on a motion offered by the Defense seeking to strike down the 5-day letter as insufficient for its purpose. If the 5-day were in fact deemed insufficient, possession would be removed from the Panel's consideration. Counsel argued that, although the notice specified an "amount due: \$650" above the body of the letter (as like information customarily listed at the top of a memorandum), it did not specify in the body of the letter that the amount due was rent specifically. Due to this fact, Counsel felt the letter did not rise to statutory requirements and thus that possession of the unit – 3914 N. Market Street, Apt. 1, Wilmington, DE 19802 – should be disallowed.

25 Del. Code § 5502 states in pertinent part that: "A landlord or the landlord's agent may, any time after rent is due . . . demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit . . ."

In the letter in question, the only amount listed as due was the \$650. Plaintiff's Counsel argued that the Defendant knew his rental amount (\$650) and since the "amount due" was \$650, the letter was clear that the amount demanded was for rent and nothing else. Further, he argued that the code does not specify the form of the notice; rather, it specifies its contents. In consideration of the arguments, the Panel found the letter established due process in that it put the defendant on notice and supplied sufficient information. Accordingly, the Defense motion was denied.

### **Facts**

Testimony was thereafter taken from both Ms. Lydia Ini (owner of A.I enterprises) and Mr. Mandracchia. Ms. Ini advised that Mr. Mandracchia had been a tenant since 2002; rent last increased to its current amount of \$650 in 2010. When rent went unpaid in April of this year, she sent the notice of demand on April 3. Ultimately, she filed this matter on April 23. Mr. Mandracchia offered payment on April 24; she accepted with reservation of rights. In support of

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her assertions, she supplied the current lease, ledger showing a balance due, the notice of demand and the letter sent reserving her rights to seek summary possession as well as the necessary proofs of mailing. She asserted that rent remained unpaid for the months of May and June to date. She advised that two checks were sent to her during the month of May, both in the amount of one month's rent (\$650.00.) These checks were sent by a philanthropic friend in an effort to assist Mr. Mandracchia. Ms. Ini advised she does not accept personal checks, and accordingly returned the first check. The second check received was a certified bank check. On the memo line of the check was written "load to Len Mandracchia for 5 West 29<sup>th</sup> St." Ms. Ini advised that she was extremely circumspect of this document, and mailed it back to the sender as well. She advised she was uncomfortable cashing a check that said it was meant to be a loan for another person; Of more import, it said on the memo "for 5 West 29<sup>th</sup> St." The leasehold in question is located at 3914 N. Market St. Ms. Ini testified that there had been some discussion about Mr. Mandracchia moving to a different unit (5 W. 29<sup>th</sup>) managed by A. I. Enterprises, but the discussions never bore fruit. She advised the panel that feared that if she cashed the check as rent for 3914 N. Market she may in fact have obligated herself to a new lease with Mr. Mandracchia for 5 W. 29<sup>th</sup>. The testimony offered by Mr. Mandracchia essentially mirrored that of Ms. Ini.

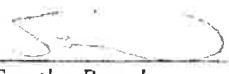
#### Discussion

Payment of rent is a material term of a contract. In this matter, clearly rent for the month of April 2018 was not paid by the terms of the lease, and subsequently went unpaid despite a demand being offered. Counsel's argument – that rent was offered on two occasions in May and refused by Plaintiff, leaving Plaintiff without a financial claim – is without merit. Mr. Mandracchia was on notice regarding Ms. Ini's policy regarding personal checks; as for the other check, the court held that Mrs. Ini was prudent in her belief that cashing that check may have embroiled her in an unintended obligation. Clearly the rent remains due. The issue of possession in this matter hinges on Ms. Ini's initial reservation of rights notice given in conjunction with the payment of April rent. She is well-within her right to maintain a claim seeking possession in this matter.

#### Conclusion

Given the afore-mentioned rationale, the court found in favor of Plaintiff, awarding \$1,321.76 (consisting of Rent for the month of May, 2018 (\$650) as well as 28 days' June rent (\$606.76); per-diem rent at the rate of \$21.67, Late fees totaling \$65, Post Judgment Interest on the debt at the legal rate, court costs of \$43.75, and possession of the unit.

**IT IS SO ORDERED THIS 23<sup>rd</sup> DAY OF JULY A.D. 2018.**

  
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*For the Panel:*  
Sean P. McCormick,  
Deputy Chief Magistrate,  
New Castle County.

